

COUNCIL

Agenda # \_\_\_\_\_

MEETING OF January 27, 2004



## **STAFF REPORT**

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### **Discussion of the Repair and Maintenance of Sidewalks and Direction on the Development of a Sidewalk Policy**

January 27, 2004

Honorable Mayor and City Council:

#### **Summary**

This report outlines issues related to the maintenance and repair of sidewalks throughout the City. City staff is looking for direction from City Council on the issues to develop a Sidewalk Policy and Sidewalk Ordinance.

#### **Background and Discussion**

Sidewalks, curbs and gutters in Belmont have suffered over the years from root uplift, vehicles parked off road and drainage problems causing soil base failures. These are the primary causes of sidewalk failures, although there may be other contributing factors. In 2001, City staff inventoried distressed sidewalk and curb and gutter. It was determined that several thousand linear feet of sidewalk could be justified for repair or removal and replacement.

#### **Existing Policy and Practice**

Municipal Code Section 22-8 titled Continual Maintenance reads “ In accordance with section 5610 of the Streets and Highways Code, the adjacent property owner is responsible for maintaining sidewalk adjacent to his property in such condition that the sidewalk will not endanger persons or property.”

The State of California’s Streets and Highways Code Chapter 22 Article 2 Section 5610 Maintenance by Lot Owners reads “The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking

strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience...by any person other than the owner..."

A critical aspect of Article 2 is the definition of sidewalk contained in Article 1 Section 5600. It reads "...sidewalk" includes a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls or other works for the protection of any sidewalks or of any such park or parking strip."

The Streets and Highways Code also establishes a procedure that allows cities to assess the cost of repairs against owners who fail to perform necessary maintenance and repairs.

This approach has not produced an improved standard of existing sidewalks. The City responds to only the worst cases of sidewalk degradation, and provides little encouragement to the property owners to adequately maintain their sidewalks. This is also true in many other cities in the California.

#### Financial Responsibility

The current practice of the City is the adjacent property owner has the full financial responsibility of the sidewalk adjacent to their property.

A survey through the League of California Cities Public Works list serve indicates a wide variety of approaches to assigning the financial responsibility to repair sidewalks on the adjacent property owners. A number of cities require the adjacent property owner to be 100% financially responsible. There are a number of Cities that assume 100% financial responsibilities and there are a number of cities where there is some shared cost. As the financial resources of the local agencies continue to dwindle, more agencies are looking for the adjacent property owner for either an increased percentage or all of the financial responsibility.

It should be noted that if sidewalk is installed by a City project there is a one-year warranty provided in the City's contract. Any work that may be done by City crews provides that same warranty period. After the one-year warranty period the financial responsibility of the sidewalk is assumed by the adjacent property owner.

#### What constitutes a tripping hazard?

The Courts have determined that any vertical displacement greater than 1/2 inch may be considered a tripping hazard.

#### Who is liable?

Many cities, including Belmont, have patterned their sidewalk programs after the Streets and Highways Code. However, the courts that have interpreted such ordinances have uniformly held the City, rather than the adjacent property owner, liable for injuries. Consequently, a pedestrian

injured as a result of a defective sidewalk generally has no recourse against an abutting owner for their failure to maintain the sidewalk.

The courts have held for such liability to exist that an ordinance must clearly and unambiguously state that abutting owners “shall be liable to members of the general public for failure to maintain public sidewalks.”

### ADA Compliance

The Ninth Circuit’s Court of Appeals decision on *Barden vs. City of Sacramento* held that sidewalks are a program covered by the Americans with Disabilities Act (ADA). The opinion concludes that *Barden* requires cities to maintain accessible sidewalks, but notes that under the current state of the ADA regulations, cities may continue to assert that complete compliance would create an “undue financial / administration burdens”.

### How do we address the problem?

There are a multitude of variations for the implementation of a Sidewalk Policy and Ordinance. The City can assume 100 percent responsibility for the program. This approach has limited resources to address the problem. The maintenance and repair of sidewalks can be 100 percent of the adjacent property owner’s responsibility. Or there could be a variety of shared cost alternatives. The cost sharing alternatives will be limited by the City resources designated to address the problem.

In light of the previous discussion, City staff believes the following elements should be part of a Sidewalk Policy and Ordinance:

Differential offset in height up to ½ inch:

- City crews will grind the offset at no cost to the adjacent property owner.

Differential offset in height of ½ inch to 1 inch:

- City crews will grind the offset at a cost of \$100 to the adjacent property owner

Differential offset in height of over 1 inch:

- City crews will install temporary asphalt fix
- City staff will notify adjacent property owner that the sidewalk needs to be removed and replaced within 30 days. The adjacent property owner will have 15 days from the date of the original notice to advise the City of their plans to take corrective action.
- If no corrective action is taken, City crews will remove and replace the sidewalk and charge the adjacent property owner the full cost of removal and replacement.

Failed portland cement concrete (PCC) and asphalt cement concrete (ACC) sidewalks:

- The adjacent property owner will be notified that the failed concrete or asphalt sidewalk must be removed and replaced.

Replacement has no public benefit:

Situations may exist where the sidewalks are damaged and be a potential liability to the City, however, their replacement may have no public benefit.

- The adjacent property owner will be notified to remove the sidewalk and grade to match adjacent street or property.
- City crews will remove the sidewalk and charge the adjacent property owner the full cost of removal and grading to match adjacent street or property.

Permit fees will be waived if the adjacent property owner(s) choose to make their own repairs. Any other fees associated with grinding of the sidewalk or emergency repairs will be set as part of the Master Fee Schedule.

Residential and commercial property owners would have the option of paying the cost at the time of invoice by the City or having a lien for the amount with annual interest placed on the property. The lien would be perfected when the property is sold, if not before. For many, this may be the least intrusive method of making payment and having acceptable sidewalks.

The City may choose to hire a contractor to undertake to sidewalk removal and replacement if we do not have adequate staff available to undertake the necessary work.

#### Alternative Cost Allocation

The City could choose to partially or fully fund the cost to remove and replace sidewalks. The cost of any funding would come from the Street Maintenance fund (Gas Tax), RDA funds (where applicable), and/or Measure A funds. The associated cost to fund the sidewalk program would have to compete with other projects throughout the City and may require a reduction of existing services within the Public Works Department. The percentage of participation will dictate the total amount of funds that would be required.

#### **Fiscal Impact**

There is no fiscal impact as the result of City Council providing direction to staff on proceeding with the establishment of a Sidewalk Ordinance.

#### **Recommendation**

It is recommended City Council provide direction to City staff on the establishment of a Sidewalk Policy and a Sidewalk Ordinance.

**Attachments**

1. None

Respectfully submitted,

Raymond E. Davis III, PE, PTOE  
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